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## Constitution

**##Electronic Frontiers Australia Ltd**  
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# ##Electronic Frontiers Australia Ltd

A company limited by guarantee

**Date:**

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## Constitution

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### 1. Definitions

In this Constitution:

**Appointing Document** has the meaning given in clause 11.6.4.

**Board** means the board of directors of the Company.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Australia.

**Company** means the company described in clause 2.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means a director appointed under clause 12.

**Indemnified Loss** means, in relation to any fact, matter or circumstance:

- (a) all Loss arising out of or in connection with that fact, matter or circumstance; and
- (b) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

**ITAA** means the *Income Tax Assessment Act 1997* (Cth).

**Loss** means damage, liability, action, loss, charge, cost or expense.

**Managing Director** means a managing director appointed under clause 13.1

**Member** means a person admitted to membership of the Company and **Membership** has a corresponding meaning.

**Officer** means a Director, Secretary or executive officer of the Company.

**Purpose** means the purpose of the Company set out in clause 4.

**Register** means the register of Members required to be kept under the Corporations Act.

**Relevant Law** means:

- (a) the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) the *Australian Charities and Not-for-Profits Commission Regulations 2013* (Cth);

- (c) the *Charities Act 2013* (Cth);
- (d) the ITAA;
- (e) the Corporations Act;
- (f) the *Corporations Regulations 2001* (Cth); or
- (g) any:
  - (i) class order or regulatory guide issued by the Australian Securities and Investments Commission;
  - (ii) public or private ruling issued by the Australian Taxation Office; or
  - (iii) Commissioner's interpretation statement issued by the Australian Charities and Not-for-Profits Commission.

**Representative** means, in relation to a body corporate, a person authorised by the body corporate to act as its representative as allowed by the Corporations Act.

**Secretary** means a secretary of the Company.

**Special Resolution** means, subject to any Relevant Law, a resolution:

- (h) of which notice has been given in accordance with clause 10 ; and
- (i) that has been passed by at least 75% of the votes cast by Members present in person or by proxy and entitled to vote on the resolution.

**Surplus Property** means, on a winding up of the Company, all property of the Company remaining after the satisfaction of all of its debts and liabilities.

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## 2. Name

The name of the Company is ##Electronic Frontiers Australia Ltd

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## 3. Constitution

### 3.1 Application of the Corporations Act

- 3.1.1 The replaceable rules in the Corporations Act do not apply to the Company.
- 3.1.2 An expression in a clause of this Constitution that deals with a matter which is dealt with by a provision of the Corporations Act or which is defined in the Corporations Act has the same meaning as in the Corporations Act, unless that expression is given a different meaning in this Constitution.

### 3.2 Inconsistency

The Relevant Law prevails over any inconsistency with this Constitution.

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## 4. Purpose

- 4.1 The Company is established to be a charity with the purpose of promoting and protecting human rights in Australia which are affected by communications systems (and associated technologies), by
- 4.1.1 maintaining an electronic public library of publications relevant to the Company's Purpose;
  - 4.1.2 educating the Australian community about the social, political and civil liberties issues involved in the use of communications systems;
  - 4.1.3 supporting, encouraging and advising on the development and use of communications systems and related innovations;
  - 4.1.4 researching and advising on the application of the law (both current and proposed) to communications systems and related technologies;
  - 4.1.5 monitoring Australia's compliance with its obligations under any relevant international human rights treaties and covenants in relation to digital rights, including Australia's compliance with its obligations under the:
    - (a) International Covenant on Economic, Social and Cultural Rights; and
    - (b) International Covenant on Civil and Political Rights; and
  - 4.1.6 advocating for policy development and, where necessary for the furtherance of the Purpose set out above, the amendment of laws and regulations in Australia and elsewhere which restrict free speech and access to information **for Australians**.

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## 5. Powers

Solely for carrying out the Purpose, the Company has the legal capacity and powers of an individual and all the powers of a body corporate, other than the power to issue shares.

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## 6. Member liability and guarantee

- 6.1 The liability of each Member is limited to the amount set out in clause 6.2.
- 6.2 Each Member undertakes to contribute a maximum of \$1.00 to the Company if it is wound up:
- 6.2.1 while the Member is a Member; or
  - 6.2.2 within one year after that Member ceases to be a Member,
- for:
- 6.2.3 the debts and liabilities of the Company contracted while that Member was a Member; and
  - 6.2.4 the costs, charges and expenses of winding up.

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## **7. Membership**

### **7.1 Register**

The Company must establish and maintain a Register.

### **7.2 General**

The Members are:

7.2.1 the persons identified in the application to register the Company lodged under s 117 of the Corporations Act and who have consented to be Members; and

7.2.2 any other person the Board admits to Membership under clause 7.3.

### **7.3 Applying for Membership**

7.3.1 Each applicant for Membership must apply in the form and manner determined by the Board from time to time.

7.3.2 The Board must consider each application for Membership it receives and determine whether to accept or reject the application.

7.3.3 The Board does not need to give any reason for rejecting an application. If the Board rejects an application, the Secretary will notify the applicant.

7.3.4 If the Board approves an application for Membership, the Secretary will enter the name of the applicant in the Register and notify them. The applicant becomes a Member when their name is entered in the Register.

### **7.4 Not transferrable**

Membership is not transferrable.

### **7.5 Membership Fees**

7.5.1 The Board may determine the Membership fee or any other fee payable by Members for a particular period. In determining the fee, the Board may provide for different fees for different categories of Members, based on such factors as it sees fit.

7.5.2 The Board must give Members not less than one month's notice of any change to the fees.

7.5.3 If a Member fails to pay their fees by the due date, the Board must notify the Member of the non-payment. If a period of 2 months (or any greater period determined by the Board) passes after such notification without payment having been made in full, the Member will be deemed to have allowed their Membership to lapse.

7.5.4 Payment of fees renders a Member financial. A Member whose fees are not paid by the due date is not financial and, for so long as any amount of their fees is outstanding, is not entitled to attend meetings of the Company, is not entitled to vote at general meetings and is not entitled to nominate a candidate or stand as a candidate for election or appointment as a Director.

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## **8. Cessation of Membership**

### **8.1 Grounds for cessation**

8.1.1 A Member will cease to be a Member if:

- (a) the Member resigns in writing to the Company;
- (b) the Member's Membership is cancelled under clause 8.2;
- (c) the Member (who is an individual) dies;
- (d) the Member allows its Membership to lapse under clause 7.5.3; or
- (e) the Member (which is a corporation) is insolvent.

8.1.2 The Board may determine, in its absolute discretion, that a Member is an untraceable Member because they are not located at, do not attend or otherwise communicate with, their registered address. An untraceable Member ceases to be a Member on the date the Board makes a determination.

### **8.2 Expulsion**

8.2.1 The Board, by a resolution passed by at least 75% of those present and voting, may expel a Member or implement appropriate disciplinary action (including temporary suspension of membership rights) if the Member:

- (a) has failed to comply with this Constitution;
- (b) has acted in a way which indicates that the Member will not support the Purposes; or
- (c) has engaged in conduct detrimental to the interests of the Company.

8.2.2 At least one month before the meeting of the Board at which a resolution referred to in clause 8.2.1 is considered, the Member must be:

- (a) served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and
- (b) given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit,

and the Board will take the explanation into consideration.

8.2.3 The Board will serve the Member with notice of any Board resolution made at the meeting described in clause 8.2.2. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

### **8.3 Removal from the Register**

8.3.1 If a Member ceases to be a Member, their name must be removed from the Register.

8.3.2 On the removal of a Member's name from the Register:



- (a) the Member will forfeit all rights and privileges attaching to Membership and all rights which the Member may have against the Company arising out of the Membership; and
- (b) the Company will have no liability to that Member arising from the Member ceasing to be a Member or the Member's removal from the Register.

#### **8.4 Surviving liability**

Any Member who ceases to be a Member remains liable:

8.4.1 for any money owing to the Company; and

8.4.2 if the Company is wound up within one year of the date of cessation of Membership, for the Member's contribution under clause 6.2.

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### **9. General meetings**

#### **9.1 General meetings called by the Board**

9.1.1 The Board may convene a general meeting at such time and place as the Board thinks fit.

9.1.2 If Members with at least 5% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the Board must:

- (a) within 21 days of the Members' request, give all Members notice of a general meeting; and
- (b) hold the general meeting within 2 months of the Members' request.

9.2 For the purposes of clause 9.1.2, the percentage of votes held by Members requesting the general meeting is calculated as at midnight immediately prior to the request being made of the Company.

9.3 The Members who make the request for a general meeting must:

9.3.1 state in the request any resolution to be proposed at the meeting;

9.3.2 sign the request; and

9.3.3 give the request to the Company.

9.4 Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

#### **9.5 General meetings called by Members**

9.5.1 If the directors do not call the meeting within 21 days of being requested under clause 9.1.2, 50% or more of the Members who made the request may call and arrange to hold a general meeting.

9.5.2 To call and hold a meeting under clause 9.5.1, the Members must:

- (a) as far as possible, follow the procedures for general meetings set out in this Constitution;

- (b) call the meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost; and
- (c) hold the general meeting within 3 months after the request was given to the Company.

9.5.3 The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

## **9.6 Annual general meeting**

9.6.1 The Company must hold a general meeting called an annual general meeting:

- (a) within ~~48~~12 months after registration as a company; and thereafter
  - (b) at least once in every calendar year,
- at the time and place determined by the Board.

9.6.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any auditor's report;
- (d) the election of Directors;
- (e) the appointment and payment of auditors (if any); and
- (f) any other business which may lawfully be transacted at a general meeting.

9.6.3 Before or at the annual general meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.

9.6.4 The chairperson of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

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## **10. Notice of general meetings**

### **10.1 General**

The Company must give not less than 21 days' written notice of a general meeting to the Members, the Directors and the auditor (if any)

### **10.2 Shorter Notice**

10.2.1 Subject to clause 10.2.2, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
- (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

10.2.2 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a Director;
- (b) appoint a Director in order to replace a Director who was removed; or
- (c) remove an auditor.

### 10.3 Contents of notice

The notice of a general meeting must specify the following information:

10.3.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);

10.3.2 the general nature of the meeting's business;

10.3.3 if applicable, a statement that a Special Resolution is to be proposed and the words of the proposed Special Resolution;

10.3.4 a statement that a Member entitled to vote has the right to appoint a proxy and that, if a Member appoints a proxy:

- (a) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
- (b) the proxy form must be delivered to the Company at least ~~48~~24 hours before the meeting.

### 10.4 Failure to receive notice

10.4.1 A person may waive the right to receive notice of a general meeting by notice to the Company.

10.4.2 If a person entitled to receive a notice of a general meeting:

- (a) does not receive that notice; or
- (b) the Company fails to give that notice,

every act performed or resolution passed at the general meeting will still be effective, if:

- (c) the failure to receive or give notice occurred by accident or error; or
- (d) before or after the meeting, the person:
  - (i) waives notice of that meeting under clause 10.4.1; or

- (ii) gives the Company notice of the person's agreement to that act or resolution.

10.4.3 A person waives any objection that person may have to any failure to give notice, or a defective notice, of a general meeting if the person attends the general meeting. That person will not have waived any objection if the person objects to the holding of the meeting at the beginning of the meeting.

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## **11. Proceedings at general meetings**

### **11.1 Quorum at general meetings**

- 11.1.1 No business may be transacted at any general meeting unless a quorum of Members is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.
- 11.1.2 A quorum for a general meeting is 10 Members entitled to vote on a resolution at the meeting, of whom not less than 3 must be Directors.
- 11.1.3 Each individual present at a general meeting may only be counted once towards a quorum.
- 11.1.4 If a Member has appointed more than one proxy, attorney or Representative, only one of them may be counted towards a quorum.
- 11.1.5 If a quorum is not present within 30 minutes after the commencement time of a general meeting:
  - (a) if the meeting was convened on the requisition of Members, the meeting will be dissolved; and
  - (b) in any other case, the meeting is adjourned to the day, and at the time and place, that the chairperson of the meeting or the Directors decide. If they do not make a decision, the meeting is adjourned to the same day in the next week at the same time and place.

### **11.2 Chairperson of general meetings**

- 11.2.1 The chairperson of Directors must act as chairperson at a general meeting if the chairperson of Directors is present within 15 minutes after the time appointed for a general meeting and is willing to act.
- 11.2.2 One of the other Directors present at the general meeting must act as chairperson if:
  - (a) there is no chairperson of Directors; or
  - (b) the chairperson of Directors is not present at a general meeting; or
  - (c) the chairperson of Directors is not willing to act as chairperson of the meeting.

### **11.3 Conduct of general meetings**

- 11.3.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.

- 11.3.2 In particular, the chairperson of a general meeting may:
- (a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and
  - (b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- 11.3.3 A decision of the chairperson on any matter under clause 11.3.2 is final.
- 11.3.4 A general meeting may be held at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 11.3.5 Where clause 11.3.4 applies:
- (a) a Member participating in such a meeting is taken to be present in person at the meeting;
  - (b) all the provisions in this Constitution relating to general meetings apply, so far as they can and with necessary changes, to meetings using the technology; and
  - (c) the meeting is taken to be held at the place determined by the chairperson of the meeting, if at least one Member was at that place for the duration of the meeting.
- 11.3.6 If the technology used for a general meeting encounters a technical difficulty, whether before or during the meeting, and as a result a Member is not able to participate in the meeting, the chairperson may:
- (a) allow the meeting to continue, if a quorum of Members remains able to participate in the meeting; or
  - (b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location that the chairperson decides,
- unless required to do otherwise by the Relevant Law.
- 11.3.7 The chairperson of a general meeting may, and must if directed by the meeting, adjourn the meeting from time to time and from place to place. No new business may be transacted at any adjourned meeting. An adjourned meeting must only transact the business left unfinished at the meeting from which the adjournment took place.
- 11.3.8 If the meeting is adjourned for more than 30 days, notice of an adjournment or of the business to be transacted at an adjourned meeting must be given.

#### **11.4 Decisions at general meetings**

- 11.4.1 Except for a resolution which the Relevant Law or this Constitution require to be passed by a special majority, questions at a general meeting must be decided by a majority of votes cast by the Members present at the meeting and entitled to vote on the resolution.
- 11.4.2 If there is an equal number of votes for and against a proposed resolution:
- (a) the chairperson of the meeting will not have a second or casting vote; and

(b) the proposed resolution is taken to have been lost.

11.4.3 A resolution proposed at a general meeting must be decided on a show of hands- unless a poll is required by the chairperson or effectively demanded by at least 5 members entitled to vote on the resolution (in person or by proxy), in which case the resolution must be decided by a poll conducted in a manner determined by the chairperson.

11.4.4 If the chairperson of a general meeting declares that a resolution has been carried or lost on a show of hands and an entry to that effect is made in the minutes of the meeting, no proof of the number or proportion of the votes recorded in favour of or against the resolution is required.

## 11.5 Voting rights

Each Member present at a general meeting and entitled to vote on a resolution has one vote on a show of hands for that resolution.

## 11.6 Representation at general meetings

11.6.1 Each Member entitled to vote at a general meeting may vote by proxy or by attorney.

11.6.2 A proxy or attorney must be a Member for the appointment to be effective.

11.6.3 A proxy or attorney may be appointed for all general meetings, for any number of general meetings or for a particular general meeting.

11.6.4 A document appointing a proxy (**Appointing Document**) must be lodged with the Company no later than ~~48~~24 hours before the commencement time for a general meeting unless the notice of meeting sets out a different place for lodgement or an earlier time, in which case that different place or time will apply.

11.6.5 An Appointing Document may contain limits on the power or authority of the proxy or attorney. If the Appointing Document does not contain any limits, the proxy or attorney will have the authority to:

- (a) agree to a meeting being convened on shorter notice than is required by this Constitution, including when a Special Resolution is proposed or passed;
- (b) speak to any proposed resolution on which the proxy or attorney may vote;
- (c) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
- (d) vote on any procedural motion; and
- (e) attend and vote at any rescheduled or adjourned meeting or at any new venue.

11.6.6 A proxy or attorney must comply with:

- (a) any limits on the powers of the proxy, attorney or Representative; or
- (b) any directions as to how the proxy, attorney or Representative is to vote on a particular resolution,

which are set out in the Appointing Document.

11.6.7 If a person present at a general meeting is the proxy or attorney of more than one Member, the person is entitled to one vote only on a show of hands.

11.6.8 Nothing in clause 11.6 limits a Member's right to appoint an attorney or Representative.

## **11.7 Decisions without general meetings**

11.7.1 If the Company has more than one Member, the Company may pass a resolution (except a resolution to remove an auditor) without holding a general meeting if all the Members entitled to vote on the resolution sign a document:

- (a) setting out the resolution; and
- (b) containing a statement that they are in favour of that resolution.

11.7.2 For the purposes of clause 11.7.1:

- (a) the resolution is passed when the last person signs the document; and
- (b) separate copies of a document may be used for signing by Members if the wording of the resolution and the statement is identical in each copy.

11.7.3 The passing of a resolution in accordance with clause 11.7.1 satisfies any requirement in the Relevant Law or in this Constitution that the resolution be passed at a general meeting.

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## **12. Directors**

### **12.1 Number of Directors**

12.1.1 There must be:

- (a) at least 3 Directors; and
- (b) not more than 11 Directors.

12.1.2 The Company may by resolution increase or reduce the minimum or maximum number of Directors for the purpose of clause 12.1.1. However, the minimum number of Directors must not be less than 3.

### **12.2 Appointment of Directors**

The Directors may appoint any natural person to be a Director:

- 12.2.1 to fill a casual vacancy; or
- 12.2.2 in addition to the existing Directors,

as long as the total number of Directors does not exceed the maximum number referred to in clause 12.1.1 (as increased or decreased under clause 12.1.2).

### **12.3 Term of appointment of Directors**

12.3.1 Except for Directors appointed to fill casual vacancies and subject to clauses 12.3.2 and 12.4, Directors will hold office for a term of approximately 3 years

starting at the ~~end date of the annual general meeting at which they were appointed their election or appointment~~ and expiring at the end of the third ~~annual general meeting after anniversary of~~ their election or appointment, at which time they must retire.

12.3.2 The first Directors will be appointed for a term that expires at the end of the first annual general meeting.

12.3.3 A Director appointed to fill a casual vacancy will be appointed for a term that expires at the end of the next annual general meeting occurring after the date of the Director's appointment.

12.3.4 A retiring Director is eligible for re-election, but will only be eligible to be re-elected or appointed as a Director for 3 consecutive terms, unless the Directors resolve unanimously that a Director may serve further consecutive terms.

12.3.5 Clause 12.3.2 does not prevent a person:

- (a) serving as a Director for more than 3 terms; or
- (b) being re-elected or appointed as a Director after having served 3 consecutive terms,

if any further term starts at least 3 years after the end of the person's third consecutive term as Director.

## 12.4 Rotation of Directors

12.4.1 At the first annual general meeting:

- (a) one third of the Directors will be appointed to hold office until the end of the following annual general meeting, when each of them must retire but will be eligible for re-election;
- (b) one third of the Directors will be appointed to hold office until the end of the second annual general meeting after the one at which each of them was elected, when they each must retire but will be eligible for re-election; and
- (c) one third of the Directors will be appointed to hold office until the end of the third annual general meeting after the one at which each of them was elected, when they each must retire but will be eligible for re-election.

12.4.2 If the number of Directors to be appointed is not a multiple of 3, the Board in its discretion may determine which Directors are elected for one, 2 and 3 years respectively. If the Board cannot agree, the Directors must draw lots to determine who is appointed for one, 2 and 3 years.

## 12.5 Termination of office

A person ceases to be a Director if the Director:

- 12.5.1 is disqualified from managing corporations under the Corporations Act;
- 12.5.2 is suspended or removed from being a responsible entity by the Australian Charities and Not-For Profits Commission;
- 12.5.3 is permanently incapacitated by ill-health and, as a result, is not able to participate in meetings of the Directors;



- 12.5.4 is absent without apology from more than 3 consecutive meetings of Directors;
- 12.5.5 is removed from office by resolution of the Company; or
- 12.5.6 resigns by notice in writing to the Company.

## **12.6 Powers of directors**

The Directors are responsible for managing the business of the Company. The Directors may exercise all the powers of the Company which are not required by the Corporations Act or this Constitution to be exercised by the Company in general meeting.

## **12.7 Proceedings of Directors**

- 12.7.1 The Directors may meet together to attend to business and adjourn and regulate their meetings as they decide.
- 12.7.2 A meeting of the Directors may be held using any technology consented to by all of the participating Directors (**Approved Technology**). The consent may be a standing one.
- 12.7.3 Where a meeting of Directors is held at two or more venues using Approved Technology:
  - (a) a Director participating in the meeting is taken to be present in person at the meeting;
  - (b) all the provisions in this Constitution relating to meetings of Directors apply, so far as they can and with such changes as are necessary, to meetings using Approved Technology; and
  - (c) the meeting is taken to be held at the place decided by the chairperson of the meeting, if at least one of the Directors was at that place for the duration of the meeting.
- 12.7.4 If the technology used for a meeting of Directors encounters a technical difficulty before or during the meeting, and as a result a Director is not being able to participate in the meeting, the chairperson may:
  - (a) allow the meeting to continue, if a quorum of Directors remains able to participate in the meeting; or
  - (b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location as the chairperson decides,unless required to do otherwise by the Relevant Law.

## **12.8 Calling meetings of Directors**

- 12.8.1 A Director may call a meeting of the Directors at any time.
- 12.8.2 A Secretary must call a meeting of the Directors at the request of a Director.

## **12.9 Notice of meetings of Directors**

- 12.9.1 Notice of a meeting of Directors must be given to:

- (a) each Director, other than a Director who will be on a leave of absence approved by the other Directors at the time of the meeting; and

12.9.2 A Director may waive notice of any meeting of Directors by notice to the Company.

12.9.3 If a person who is entitled to receive notice of a meeting of Directors:

- (a) does not receive that notice; or
- (b) the notice is not given,

then every act performed or resolution passed at the meeting will still be effective if:

- (c) the failure to receive or give notice occurred by accident or error;
- (d) before or after the meeting the person:
  - (i) has waived or waives notice of that meeting under clause 12.9.2; or
  - (ii) has given or gives the Company notice of the person's agreement to that act or resolution.

12.9.4 If a person attends a meeting of Directors, that person waives any objection that person may have to a failure to give notice of the meeting.

## **12.10 Quorum at meetings of Directors**

12.10.1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.

12.10.2 A quorum for a meeting of Directors is 4 Directors.

12.10.3 If the number of Directors is not sufficient to constitute a quorum, the remaining Director or Directors may act only:

- (a) in an emergency;
- (b) to increase the number of Directors to a number sufficient to constitute a quorum; or
- (c) to call a general meeting of the Company.

## **12.11 Chairperson of Directors**

12.11.1 The Directors may elect one of the Directors as a chairperson of Directors and may decide the period for which that Director is to be chairperson of Directors.

12.11.2 The chairperson of Directors must act as chairperson at a meeting of Directors if that person is present within 15 minutes after the time appointed for the holding of a meeting of Directors and willing to act.

12.11.3 One of the other Directors must act as chairperson of the meeting if:

- (a) there is no chairperson of Directors; or
- (b) the chairperson of Directors is not present at a meeting of Directors; or

- (c) the chairperson of Directors is not willing to act as chairperson of the meeting.

## **12.12 Decisions of Directors**

12.12.1 Questions arising at a meeting of Directors will be decided by a majority of votes of Directors present and entitled to vote.

12.12.2 If there is an equal number of votes for and against a proposed resolution:

- (a) the chairperson of the meeting will not have a second or casting vote; and
- (b) the proposed resolution is taken to have been lost.

## **12.13 Written resolutions**

12.13.1 The Directors may pass a resolution without holding a Directors' meeting if all the Directors entitled to vote on the resolution sign a document setting out the resolution and containing a statement that they are in favour of the resolution.

12.13.2 For the purposes of clause 12.13.1:

- (a) the resolution is taken to have been passed when the last person signs the document; and
- (b) separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

## **12.14 Delegation by Directors**

12.14.1 The Directors may delegate any of their powers to:

- (a) a committee of Directors
- (b) a committee of one or more Directors and other persons; or
- (c) a Director; or
- (d) any other person, including as attorney or agent.

12.14.2 The delegate must exercise the powers delegated in accordance with any directions of the Directors.

12.14.3 The exercise of a power by a delegate is as effective as if the Directors had exercised it.

12.14.4 The rules applying to meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of Directors.

## **12.15 Validity of acts**

An act by a person acting as a Director or by a meeting of Directors or a committee of Directors attended by a person acting as a Director is valid despite:

12.15.1 a defect in the appointment of the person as a Director;

12.15.2 the person being disqualified to be a Director or having vacated office; or

12.15.3 the person not being entitled to vote,

if the person or the Directors or committee of Directors (as the case may be) were not aware of the relevant circumstances when the act was done.

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## **13. Executive officers**

### **13.1 Managing Directors**

13.1.1 The Directors may appoint one or more of the directors to the office of the Managing Director.

13.1.2 A Managing Director's appointment automatically terminates if the Managing Director ceases to be a Director.

### **13.2 Secretaries**

The Directors must appoint one person, and may appoint more people, as Secretary.

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## **14. Indemnity and insurance**

### **14.1 Indemnification of Officers**

14.1.1 Subject to clause 14.1.2, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.

14.1.2 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.

14.1.3 The obligation of the Company in clause 14.1.1:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant company;
- (c) applies to Loss incurred both before and after the date of the adoption of this Constitution; and
- (d) does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.

14.1.4 The obligation of the Company in this clause 14.1 will not apply to the extent that:

- (a) the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;
- (b) an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or
- (c) the Company is not allowed by Law to make a payment for legal costs.

## **14.2 Insurance**

To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.

## **14.3 Agreement**

The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 14.

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## **15. Application of income and property**

### **15.1 Promotion of Principal Purpose**

- 15.1.1 All of the income and property of the Company must be applied solely towards the furtherance and promotion of the Purpose.
- 15.1.2 No part of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or other profit distribution to any of the Members (in their capacity as Members) or Directors.

### **15.2 Payments in good faith**

- 15.2.1 The Company must not make any payment to a Director for services rendered by that Director to the Company, including services as a Director, unless:
  - (a) the provision of those services has the prior consent of the Board;
  - (b) the amount payable is on reasonable commercial terms; and
  - (c) the payment has the prior approval of the Board.
- 15.2.2 Clause 15.1 does not prevent payment in good faith to an Officer or Member, or to a firm of which an Officer or Member is a partner if the payment complies with clause 15.2.1 and is:
  - (a) of remuneration for services to the Company;
  - (b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;
  - (c) for goods supplied to the Company in the ordinary course of business;
  - (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
    - (i) the interest or rent has the prior approval of the Board; and
    - (ii) the amount payable is not more than an amount which commercially would be reasonably paid.
- 15.2.3 The total of payments made to Directors under this clause 15.2 must be disclosed to the Members at the annual general meeting.

- 15.2.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by a Relevant Law and this Constitution.

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## **16. Gift Fund**

If the Company is endorsed as a deductible gift recipient under Sub-division 30-BA of the ITAA:

### **16.1 Establishment and purpose of the Gift Fund**

- 16.1.1 The Company will maintain a fund, called the 'EFA Digital Rights Archive Gift Fund' (**Gift Fund**) for the specific purpose of establishing, maintaining and operating a public library of publications relevant to the Company's Purpose (**Public Library**);
- 16.1.2 All gifts of money or property received by the Company for the Public Library must be credited to the Gift Fund.
- 16.1.3 The Gift Fund will not receive any other money or property.
- 16.1.4 The Company must use the Gift Fund only to further the Public Library.

### **16.2 Not for profit**

The Gift Fund will operate on a not-for-profit basis.

### **16.3 Public Donations**

- 16.3.1 The Company will invite members of the public to make gifts of money or property to the Gift Fund for the Public Library.

### **16.4 Management of the Fund**

- 16.4.1 The Company will appoint to administer the Gift Fund a committee of management of no fewer than 3 persons, the majority of whom must come within the class of persons acceptable to the Commissioner of Taxation (including any Deputy Commissioner) as having a degree of responsibility to the general community.

### **16.5 Deposits and accounting procedures**

- 16.5.1 Money from interest on donations, income derived from donated property and money from the realisation of such property is to be deposited into the Gift Fund.
- 16.5.2 A separate bank account is to be opened to deposit money donated to the Gift Fund, including interest accruing on such deposits, and gifts to it must be kept separate from other funds of the organisation.
- 16.5.3 Receipts must be issued in the name of the Gift Fund and proper accounting records and procedures must be kept and used for the Gift Fund.

### **16.6 Winding up of the Gift Fund**

- 16.6.1 If the Gift Fund is wound up, or the Company's endorsement under Sub-division 30-BA of the ITAA is revoked, the Company must transfer any surplus assets of the Gift Fund to a fund, authority or institution, nominated by the Board, with similar purposes, which is charitable at law and to which gifts can be deducted under Division 30 of the ITAA.

## **16.7 Ongoing compliance**

- 16.7.1 Any other provisions which from time to time are required by the ITAA in order to maintain the status of the Company as a Company to which gifts can be deducted under the ITAA are deemed to form part of this Constitution.

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## **17. Distribution of property on winding-up**

- 17.1 If the Company is wound up all Surplus Property must be given or transferred to another organisation or organisations which:
- 17.1.1 Has (or have) a purpose similar to, or inclusive, the Purpose;
  - 17.1.2 is endorsed as a deductible gift recipient under the ITAA, if the Company is at that time endorsed as a deductible gift recipient under the ITAA; and
  - 17.1.3 prohibits the distribution of profit, income and assets to its members to at least the same extent as this Constitution.
- 17.2 Surplus Property must not be paid to or distributed to a Member or a former Member, unless that Member or former Member is an organisation described in clause 17.1.
- 17.3 The organisation to which Surplus Property is distributed under clause 17.1 must be determined:
- 17.3.1 by a special resolution of the Members at or before the time of winding up of the Company; or
  - 17.3.2 if no special resolution is passed, by a judge of the Supreme Court or another court of competent jurisdiction.

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## **18. Notices**

### **18.1 Delivery of notice**

- 18.1.1 A notice required by this Constitution must be in writing and may be delivered:
- (a) personally;
  - (b) by leaving it at the person's address in the Register;
  - (c) by posting it by prepaid post addressed to that person at the person's address for service;
  - (d) by facsimile to the person's facsimile number; or
  - (e) by electronic mail to the person's email address.
- 18.1.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.
- 18.1.3 A person may change their address, facsimile number or email address by giving notice to the Company.

## **18.2 Time of delivery**

A notice or other communication is deemed delivered:

- 18.2.1 if delivered personally or left at the person's address, upon delivery;
- 18.2.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- 18.2.3 if delivered by facsimile, subject to paragraph 18.2.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 18.2.4 if delivered by electronic mail, subject to clause 18.2.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- 18.2.5 if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day in that place.

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## **19. Interpretation**

### **19.1 Words and headings**

In this Constitution, unless expressed to the contrary:

- 19.1.1 words denoting the singular include the plural and vice versa;
- 19.1.2 the word 'includes' in any form is not a word of limitation;
- 19.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- 19.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Constitution

### **19.2 Specific references**

In this Constitution a reference:

- 19.2.1 in general terms to a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;
- 19.2.2 to a gender includes every other gender;
- 19.2.3 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 19.2.4 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 19.2.5 writing includes writing in digital form;



- 19.2.6 'this Constitution' is to this Constitution as amended from time to time;
- 19.2.7 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 19.2.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Constitution;
- 19.2.9 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 19.2.10 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 19.2.11 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 19.2.12 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

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## **20. General**

### **20.1 Submission to jurisdiction**

Each member submits to the exclusive jurisdiction of the courts of the Australian Capital Territory.

### **20.2 Severability**

20.2.1 Any provision of this Constitution that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

20.2.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Constitution that is unlawful or unenforceable will be severed from this Constitution and the remaining provisions continue in force.

### **20.3 Business Day**

If a payment or other act is required by this Constitution to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.